Joel Ario

Insurance regulation serves two broad purposes: financial regulation to ensure that insurers have the resources to honor their promises, and market regulation to ensure that consumers are treated fairly. I will focus my comments on market regulation since that is where I have focused at the NAIC.

The threshold test of our market regulation efforts is whether we are identifying the most important consumer problems. If we fail this test, it doesn't really matter whether we are super effective at correcting whatever problems we uncover because the real action is elsewhere. My view is that we haven't done as good a job as we could on this threshold test, but that we are headed in the right direction by making "market analysis" the foundation of our market regulation efforts. As the commissioners stated in the *Regulation Modernization Action Plan,* adopted in 2003, the starting point for modernization is "market analysis to assess the quality of every insurer's conduct in the marketplace."

Let me note here that this new direction will require significant changes for states that have focused their regulatory efforts around market conduct examinations designed to measure legal compliance in certain defined areas. As we focus on market analysis and identification of the most important consumer problems, states are finding new problems that demand attention and discovering that the traditional exam approach is not always well-suited to addressing such problems. Changing focus is not easy and it will take time, but it is necessary if we are to modernize our regulatory programs for the benefit of consumers and the actual problems they face in the marketplace.

We still have a ways to go before our market surveillance tools are as well-honed as our financial surveillance tools, but we are making progress in utilizing a broad range of data — from consumer complaints to relevant data from the financial annual statement to a new market conduct annual statement — to identify market practices that hurt consumers. If we do the job correctly, there is no reason why we can't get to the point where we routinely uncover harmful practices at an early stage, when corrective action is much easier to take than after a practice has become entrenched in the marketplace.

As market analysis improves our ability to identify problems, we'll also need to refine the regulatory tools we have for correcting those problems. We will never eliminate the need for on-site examinations to go after the worst problems, but those exams should be targeted so that they effectively get at the real problems. We're also finding that many problems can be addressed more efficiently through more flexible approaches. Examples include better education on new laws, targeted data calls on emerging problems, and desk audits of problem companies. Our mission is consumer protection, but it doesn't serve consumers to impose unnecessary regulatory costs on insurers.

Our final challenge will be to develop an effective model for interstate collaboration on market problems. The model is likely to be rooted in some form of domestic deference, but it won't be as straightforward as it is on the financial side. While certain market conduct laws should be more uniform than they are currently, there are sound consumer protection reasons why many laws vary in response to local market conditions. Plus there always will be issues with companies that operate differently in different parts of the country. We need to harmonize our laws where we can, but we also must continue to make the case that diversity among the state "laboratories of democracy" is a strength, not a weakness.

Even with continued diversity, however, I do foresee the day when market accreditation standards will stand alongside the current financial ones, and give all states the confidence to rely on each other for routine oversight responsibilities. Companies could help move this process along by developing more accountable self-auditing practices along the lines of the NAIC's recent white paper on best practice organizations. Self audits will never replace regulator oversight, but they can be a valuable complement to our work, particularly in our routine oversight of companies that don't show up as problems through market analysis.

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